**HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES**
**P.O. Box 2910, Austin, Texas 78768-2910**
**(512) 463-0752 • http://www.hro.house.state.tx.us**



# HOUSE RESEARCH ORGANIZATION

## daily floor report

Tuesday, April 16, 2013
83rd Legislature, Number 52
The House convenes at 10 a.m.

Seven bills are on the daily calendar for second-reading consideration today. They are analyzed in today's *Daily Floor Report* and are listed on the following page.

The following House committees had public hearings scheduled for 8 a.m.: Appropriations subcommittee on Budget Transparency and Reform in Room E1.030; Judiciary and Civil Jurisprudence subcommittee on Probate in Room E2.028; Natural Resources in Room E2.010; and Transportation in Room E2.012.

The Public Education Committee has a public hearing scheduled upon adjournment in Room E2.036. The following House committees have public hearings scheduled for 10:30 a.m. or on adjournment: Criminal Jurisprudence in Room E2.016; Environmental Regulation in Room E1.026; and Human Services in Room E2.030. The Licensing and Administrative Procedures Committee has a public hearing scheduled for noon or on adjournment in Room E1.010. The Select Committee on Transparency in State Agency Operations has a public hearing scheduled for 1 p.m. or on adjournment in JHR 140. The Business and Industry Committee has a public hearing scheduled for 1:30 p.m. or on adjournment in Room E2.014. The Insurance Committee has a public hearing scheduled for 2 p.m. or on adjournment in Room E2.026.

Bill Callegari
Chairman
83(R) – 52

# HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, April 16, 2013
83rd Legislature, Number 52

SUBJECT: Increased penalties for prostitution, other offenses; human trafficking

COMMITTEE: Judiciary and Civil Jurisprudence — committee substituted recommended

VOTE: 8 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, K. King, Raymond, S. Thompson

0 nays

1 absent — Hunter

WITNESSES: For — Jason Sabo, Children at Risk; (*Registered, but did not testify*: Jennifer Allmon, The Texas Catholic Conference, Roman Catholic Bishops of Texas; Steve Bresnen, Texas Family Law Foundation; David Duncan, Texas Baptist Christian Life Commission; Brian Eppes, Tarrant County District Attorney's Office; Joshua Houston, Texas Impact; Rene Lara, Texas AFL-CIO; Diana Martinez, TexProtects, The Texas Association for the Protection of Children; Glen Maxey, Texas Democratic Party; Norma Mullican and Barbara Waldon, Refuge of Light; Steven Tays, Bexar County Criminal District Attorney's Office; Ware Wendell, Texas Watch; Justin Wood, Harris County District Attorney's Office)

Against — None

On — Geoff Barr, Office of the Texas Attorney General; (*Registered, but did not testify:* Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Penal Code, sec. 43.02 makes prostitution a crime. It is a crime to knowingly offer to engage in or to engage in sex for a fee or to solicit another in a public place to engage in sex for hire. It is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) if the person solicited was 14 to 17 years old and a second-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) if the persons solicited was younger than 14.

Penal Code, sec. 43.03 makes the promotion of prostitution a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000). It

is an offense to knowingly receive money or property under an agreement to share in the proceeds of another's prostitution or to solicit someone to engage in sexual conduct with another person for payment.

Penal Code, sec. 43.04 makes the aggravated promotion of prostitution a third-degree felony. It is an offense to knowingly own, invest in, finance, control, supervise, or manage a prostitution enterprise using two or more prostitutes.

DIGEST:

CSHB 8 would make several changes to Penal Code, Code of Criminal Procedure, and Government Code statutes dealing with prostitution, the trafficking of persons, and other crimes, including:

- increasing the penalties for certain offenses related to prostitution involving children;
- eliminating the statute of limitations for compelling prostitution of children;
- prohibiting jury-recommended probation and restricting parole consideration for certain offenses;
- adding some prostitution-related offenses to the sex offender registry;
- merging provisions dealing with protective orders for victims of human trafficking and certain other victims; and
- allowing victims of trafficking to receive relocation expenses from the crime victims compensation fund and to participate in a state address confidentiality program.

The bill would take effect September 1, 2013, and would apply only to offenses committed and protective orders issued on or after that date.

**Punishments for prostitution, other offenses.** CSHB 8 would increase the penalties for several offenses related to prostitution and trafficking.

*Prostitution.* CSHB 8 would expand the current second-degree felony punishment (two to 20 years in prison and an optional fine of up to $10,000) for soliciting children younger than 14 years old to cover soliciting children younger than 18 years old. The second-degree punishment would apply regardless of whether the defendant knew the age of the person being solicited. The current third-degree felony punishment for soliciting a person age 14 to 17 years old would be eliminated.

*Promotion of prostitution.* The punishment for promotion of prostitution would be increased for some offenses.

Instead of all offenses being class A misdemeanors, it would be a second-degree felony to:

- solicit a child younger than 18 years old to engage in prostitution with another person; or
- receive money or property under an agreement to take part in the proceeds of prostitution by a person younger than 18.

The punishment for the aggravated promotion of prostitution would be increased from a third-degree felony to a first-degree felony if the prostitution ring used one or more people under 18 years old as a prostitute.

*Employment harmful to children.* The bill would eliminate one of two sets of Penal Code provisions adopted by the 82nd Legislature that established different penalties for employment harmful to children. It would eliminate provisions making the offense a state jail or third-degree felony for repeat offenders and retain provisions making the offense a second-degree felony or, if the child were younger than 14, a first-degree felony.

*Obscenity.* CSHB 8 would increase the punishment for offenses related to obscene material involving children younger than 18. The punishment for persons acting as wholesale promoters of obscene materials or devices would be increased from a third-degree to a second-degree felony. Offenses for promoting or possessing with intent to promote obscene materials or devices or for involvement in an obscene performance would be increased from a state jail felony to a second-degree felony.

*Engaging in criminal activity.* The bill would add the offense of continuous sexual abuse of a young child and solicitation of a minor to the list of crimes that when committed under certain circumstances can constitute the offense of engaging in organized criminal activity.

**Statute of limitation for compelling prostitution of children.** CSHB 8 would eliminate the statute of limitations for compelling prostitution of children younger than 18. Indictments for the offense could be brought any time, rather than within the current limit of 10 years from the 18th birthday of the victim.

**Jury probation, parole eligibility for compelling prostitution and trafficking.** The bill would add compelling prostitution and trafficking of persons to the list of offenses that are ineligible for jury-recommended probation.

The bill also would add these offenses to the list of crimes for which offenders are not eligible for release on parole until their actual calendar time served, without consideration of good conduct time, equals half of their sentences or 30 years, whichever is less, with a minimum of two years.

**Sex offender registration.** CSHB 8 would require sex offender registration for persons convicted of second-degree felony prostitution for soliciting sex from someone who was younger than 18 years old.

**Protective orders.** CSHB 8 would merge the current Code of Criminal Procedure (CCP), ch. 7B provisions dealing with protective orders for victims of human trafficking with CCP, ch. 7A, which deals with protective orders for certain victims of trafficking, sexual assault, and stalking. The bill would repeal CCP ch. 7B.

**Crime victims compensation fund, address confidentiality program.** CSHB 8 would allow victims of specified crimes relating to trafficking to be among those who could receive one-time only assistance payments from the state's crime victims compensation fund for relocation and housing assistance. They also could participate in an address confidentiality program run by the attorney general that allows some crime victims to use a substitute post office box address in place of their true address and that requires the attorney general to forward mail to the victims. These provisions would apply to victims of trafficking and continuous trafficking, promotion and aggravated promotion of prostitution, compelling prostitution, sexual performance by a child, employment harmful to children, and possession or promotion of child pornography.

SUPPORTERS SAY:

CSHB 8 is necessary to continue the state's efforts to combat the horrific crime of human trafficking, especially the sex trafficking of children. Texas has been identified as a hub for international human trafficking, and in response, the state has enacted numerous laws to combat these crimes. These have included laws to punish traffickers, protect victims, and establish the state's Human Trafficking Prevention Task Force. CSHB 8

would continue these efforts by focusing on crimes related to the sex trafficking and exploitation of children.

**Punishment for prostitution, other offenses.** The serious impact of these crimes on individual children warrants increased penalties and justifies the use of any state resources to deal with them. CSHB 8 would not result in a significant impact on state resources, according to the bill's criminal justice impact statement.

*Prostitution.* Texas law should protect all children equally from the crime of prostitution. CSHB 8 would do so by making soliciting prostitution of all children under 18 years old a second-degree felony, instead of imposing different penalties for those under 14 years old and those 14 to 17 years old. The bill would put this crime on par with sex trafficking of a child and compelling prostitution of a child by imposing the punishment regardless of whether the defendant knew the age of the person solicited. All of these offenses should be treated similarly because they exploit children who are the most vulnerable to these horrible crimes.

*Promotion of prostitution*. CSHB 8 would increase penalties for the promotion and aggravated promotion of prostitution of children because of the devastating effect these crimes have on children. Current penalties can result in a mere slap on the wrist to offenders. Increasing these penalties to second-degree and third-degree felonies would better reflect the role of this crime in human trafficking and would help protect children by deterring the crimes and keeping predators off the streets longer.

While some other offenses that carry stiff penalties, such as compelling prostitution and human trafficking, could cover some situations involving promoting prostitution, they may not cover all of them. For example, compelling prostitution requires force, threat, or fraud, elements that may not be present or could be difficult to prove in a particular case involving promoting the prostitution of a child. It would be more effective to ensure that promoting and soliciting children to take part in prostitution was itself punished as a serious offense.

CSHB 8 would impose stiffer penalties for prostitution promotion involving children by using the same upper age limit,18 years old, that is used in current law for other similar offenses. For example, the penalties for prostitution and human trafficking are enhanced if a child under 18 years old is involved in the offense.

*Employment harmful to children.* In 2011, two bills were enacted with differing penalties for the crime of employing or inducing children to work in sexually oriented businesses. CSHB 8 would resolve the conflict between the differing penalties by adopting the higher penalty to best deter and punish these offenses that exploit children.

*Obscenity.* CSHB 8 would align penalties for promoting and for possessing with the intent to promote obscene materials or devices with the second-degree felony punishments imposed for promotion of child pornography. These offenses are similar and should carry the same penalty.

*Engaging in criminal activity.* Because most human trafficking crimes are by definition organized crime, CSHB 8 would add continuous sexual abuse of a young child and solicitation of a minor to the organized crime laws. This would give prosecutors another tool to combat these offenses.

**Statute of limitation for compelling prostitution of children.** Eliminating the statute of limitations for compelling the prostitution of children would allow child victims more time to come forward. These sex trafficking crimes change children's lives forever, and a measure of justice always should be available for them. Eliminating the statute of limitations would be appropriate because children often have to become old enough to take care of themselves and distance themselves from the experience of being a victim before feeling safe enough to come forward.

Texas has eliminated the statute of limitations for several other serious crimes when it is appropriate, including sex trafficking offenses involving children.

**Jury probation and parole eligibility for compelling prostitution and trafficking.** CSHB 8 would place compelling prostitution and human trafficking in the same category as other serious offenses for which juries cannot recommend community supervision. It is not appropriate for these offenders to be released on probation. These offenses already are included in the list of serious offenses that cannot receive judge-ordered community supervision.

The bill also would allow the Board of Pardons and Parole to consider parole from prison for persons convicted of these crimes only after they

had served an appropriate portion of their sentence. Given the nature of these crimes, it would be proper for offenders to serve at least half their sentences or 30 years, without consideration of good conduct time, instead of the default that allows parole consideration when time-served plus good conduct time equals one-quarter of a sentence. CSHB 8 would place these offenses among numerous other crimes that have been deemed worthy of requiring at least one-half of a sentence to be served, including sexual performance by a child.

**Sex offender registration.** It would be appropriate to require sex offender registration for those convicted of soliciting sex from children. The registry is designed to help protect the public by making offender information available online. Persons committing these crimes could be a danger to other children, and the public should have access to information about them.

CSHB 8 would place these offenders in the state's sex offender registry with other, similar offenders already required to register, such as those convicted of compelling prostitution and sexual performance by a child. Any problems with the sex offender registry should be dealt with independently of this bill and should not stand in the way of including these serious offenses in the registry.

**Protective orders.** In 2011, two laws were enacted dealing with protective orders for human trafficking victims, resulting in duplicate provisions. One law added sex trafficking offenses to CCP, ch. 7A provisions dealing with protective orders for victims of sexual assault. Another bill created a new section, CCP, ch. 7B, dealing with protective orders for human trafficking victims. CSHB 8 would address the problem of duplicate provisions by merging the two sections, resulting in CCP, ch. 7A covering protective orders for victims of sexual assault or abuse, stalking, and human trafficking, with ch. 7B being repealed.

**Crime victims compensation fund, address confidentiality program.** CSHB 8 would aid child victims of trafficking and prostitution by allowing them to receive payments from the crime victims compensation fund for relocation expenses. This would give these trafficking victims the same help as victims of family violence and of sexual assault in the home.

CSHB 8 would recognize that trafficking victims could have the same need for a confidential address as victims of family violence, sexual

offenses, and stalking. To meet this need, CSHB 8 would add these victims to list of those who may participate in the address confidentiality program run by the attorney general. Under the program, the attorney general designates a substitute post office box address for the victims' use, acts as the victims' agent in receiving service of process and mail, and forwards mail to the victim. These actions can help protect victims from further harm from those who trafficked and abused them.

OPPONENTS SAY:

**Punishments for various trafficking and prostitution offenses.** Current law properly punishes the offenses in CSHB 8. Enhancing offenses — especially from a misdemeanor to a felony — would be an unnecessary leap in punishments for broad categories of offenses that are adequately handled under current law. For example, CSHB 8 would make promotion of prostitution and aggravated promotion first- and second-degree felonies if the prostitute were younger than 18. This would include 17-year-olds who are not considered children in the criminal justice arena for most other purposes.

Other offenses, some with serious punishments, can be used, if appropriate, in trafficking and prostitution cases involving children. For example, compelling prostitution and human trafficking of a child, regardless of whether someone knows the age of the child, are first-degree felonies. The current structure allows punishments to vary for different crimes and allows state resources to be allocated accordingly.

**Statute of limitation for compelling prostitution of children.** Eliminating the statute of limitations for compelling prostitution of a child could render defendants unable to defend themselves. Over time, witnesses' memories fade and evidence becomes more difficult to obtain. The lack of a statute of limitations could give false hope to victims that prosecutors might take up old cases based on evidence that is too weak to obtain a conviction.

**Jury probation and parole eligibility for compelling prostitution and trafficking.** Restricting jury probation for compelling prostitution and trafficking would reduce the options for juries in handling these cases. In addition, requiring a longer minimum time served before parole eligibility could keep some offenders in prison longer than appropriate. Current law that would allow offenders to be considered for parole earlier than under CSHB 8 does not mean that offenders are released on their review date, only that the Board of Pardons and Paroles considers the case.

**Sex offender registration.** Adding new offenses to the sex offender registry could compound the problem of an overly broad database that includes too many offenders who are not threats to the community and should not be grouped with sexual predators.

NOTES:

The committee substitute added to the filed bill a change in the title of Penal Code sec. 38.112, which makes it an offense to violate protective orders issued under Code of Criminal Procedure Chapter 7A. The addition by the committee substitute would make the title of Penal Code sec. 38.112 reflect the change that CSHB 8 would make to the title of Chapter 7A.

HB 32 by Menendez, on today's calendar, also would increase penalties for the promotion of prostitution and the aggravated promotion of prostitution of children and would require persons convicted of certain prostitution, promotion of prostitution, and aggravated promotion of prostitution offenses to register with the state's sex offender registry.

The companion bill, SB 532 by Van de Putte, has been referred to the Senate Criminal Justice Committee.

SUBJECT: Reporting requirements for public pension plans

COMMITTEE: Pensions — committee substitute recommended

VOTE: 5 ayes — Callegari, Alonzo, Frullo, P. King, Stephenson

0 nays

2 absent — Branch, Gutierrez

WITNESSES: (*On original bill:*)
For — Eyna Canales-Zarate, Texpers; Todd Clark, Houston Firefighters Relief and Retirement Fund; Doreen McGookey, Fort Worth Employees' Retirement Fund; James Quintero, Texas Public Policy Foundation; Warren Schott, San Antonio Fire and Police Pension Fund; Jim Smith, San Antonio Police Officers Association; David Stacy, Midland Firemen's Relief and Retirement Fund; Charley Wilkison, Combined Law Enforcement Associations of Texas; (*Registered, but did not testify:* Frank Burney, San Antonio Fire and Police Pension Fund; Lon Craft, TMPA; Daniel Earnest, San Antonio Police Officers Association; Duane Galligher, Austin Firefighters Relief and Pension Fund; Lisa Hughes, El Paso Firemen and Policemen's Pension Fund; Keith Johnson, Austin Firefighters Relief and Pension Fund; Dustin Matocha, Texans for Fiscal Responsibility; Washington Moscoso, San Antonio Police Officer's Association; Ed Sterling, Texas Press Association; Michael Trainer, San Antonio Fire & Police Pensioners' Association)

Against — None

On — Susan Combs, Texas Comptroller of Public Accounts; Christopher Hanson, Pension Review Board; Dan Hart, Taxpayers For Equal Appraisal; Josh McGee, Laura and John Arnold Foundation; (*Registered, but did not testify:* Derrick Osobase, Texas State Employees Union; Vicki Truitt, Texas Retired Teachers Association; Sherri Walker, Fire Fighters Pension Commissioner)

(*On committee substitute:*)
For — (*Registered, but did not testify:* Peggy Venable, Americans for Prosperity-Texas)

BACKGROUND:

Government Code, ch. 801, grants the State Pension Review Board (PRB) authority to review all public retirement systems regarding benefits, financing, actuarial soundness, and administrative functions. The pension systems submit to PRB various information, including registration, actuarial studies, annual financial reports, and the number of members and retirees served. The PRB is authorized to establish and recommend best practices and conduct studies of public pension systems for the Legislature. About 350 public retirement systems are registered with PRB, with membership totaling more than 2.4 million and assets exceeding $200 billion.

DIGEST:

CSHB 13 would expand reporting requirements for all public pension systems to include the reporting of investment returns. It would require that returns and other information be posted on the Pension Review Board (PRB) website or on another website to which it is linked. The PRB would create and administer new educational training programs to help system administrators and trustees perform their duties.

**Reporting and internet posting requirements.** Within 211 days of the end of a public retirement system's fiscal year, the system would be required to submit a report to PRB that included:

- gross and net investment returns for each of the most recent 10 fiscal years;
- rolling gross and rolling net investment returns for the most recent one-year, three-year, and 10-year periods;
- rolling gross and rolling net investment return for the most recent 30-year period or the gross and net investment return since the system's inception, whichever period was shorter;
- the assumed rate of return used in the most recent actuarial valuation; and
- the assumed rate of return used in each of the most recent 10 actuarial valuations.

The bill would define "net investment return" as gross investment return minus investment expenses. It could be calculated as the money-weighted rate of return as required by generally accepted accounting principles.

If any of the required investment information were unavailable, the governing body of the public retirement system would have to submit by

the reporting deadline a letter certifying that the information was unavailable, providing a reason, and agreeing to timely submit the information if it became available.

CSHB 13 would require PRB to post the investment data and other reports submitted by the pension systems on the PRB website or another website to which the PRB website was linked. If the PRB had not received the information within 60 days after it was due, the agency would post online a list of retirement systems that had not submitted the required information. It also would notify the governor and Legislative Budget Board (LBB) regarding statewide systems that had not complied and the governing bodies of political subdivisions regarding local retirement systems that had not done so.

Each public pension system would have to post on a publicly available website the contact information for a system administrator and the various reports the system submitted to the PRB. All required reports and information would remain posted until replaced with updated information.

**Education and training.** CSHB 13 would require PRB to develop and post on its website model ethical standards and conflict-of-interest policies, including disclosure requirements, for voluntary use by public retirement systems. The standards and policies would have to be published by December 31, 2013.

The PRB would develop and administer an educational training program with minimum training requirements for trustees and system administrators. To the extent practicable, training programs would be available online. The PRB could adopt rules and reasonable fees to cover actual costs of the training, which would begin by September 1, 2014. The fees would have to be paid from a source considered appropriate by the governing body of the public retirement system.

A system could provide its own training if it met or exceeded minimum requirements set by the PRB, which would develop a system to track compliance beginning on or after January 1, 2015. The PRB would report compliance to the Legislature and the governor as part of an existing report issued in November of each even-numbered year.

The bill would require PRB to study the financial health of public retirement systems, including each system’s ability to meet its long-term

obligations. The report would be issued by September 1, 2014, and pension systems would have reasonable opportunity to review the PRB's findings and recommendations and submit a response. The final report would be submitted to the Legislature by December 31, 2014.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 13 would improve the transparency and oversight of public pension programs across the state. This would help protect the taxpayers who fund pension obligations, as well as the teachers, firefighters, police officers, and government employees who deserve to know their retirements are financially secure.

Underfunded pensions are a type of public debt that must be exposed. A huge unfunded pension liability was cited as a major factor last June when Stockton, California became the largest city in U.S. history to file for bankruptcy. Information on pension plans' actuarial assumptions, investment returns, benefit design and employee and employer contributions allow plan members and taxpayers to determine if a pension system will be able to meet its future obligations. CHSB 13 would facilitate the public accessibility of this important information.

While there is a small fiscal note attached to the bill, the nominal cost to the state would be far outweighed by the expected returns of increased transparency and accountability to taxpayers.

**Reporting and internet posting requirements.** In a December 2012 report, Comptroller Susan Combs reviewed statewide and local pension systems and found that a majority are healthy. To help ensure these plans remain viable, the comptroller recommended the Legislature take steps to improve transparency. She testified that it was difficult to get financial information from some public retirement systems, even though the systems are subject to state public information laws. Out of 89 public information requests filed by the comptroller, 37 pension systems provided the information, 42 provided partial information, and 10 did not respond. It presumably would be even more difficult for average taxpayers to learn about the financial health of their local pension systems. CSHB 13 would provide the transparency necessary to keep plan members and taxpayers appropriately informed about the health of these systems.

CSHB 13 would not place additional burdens on pension systems because the information required for the reports should already be available. For example, many systems publish data about rates of return in their annual reports, and the bill simply would require that the same information be reported to the PRB and posted online, a move that would dramatically increase public access to the information. Requiring systems to publish their net and gross returns would allow better accounting of expenses, including fees paid to fund managers. The Texas County and District Retirement Systems and Texas Municipal Retirement System told the LBB that there would be no significant cost to comply with the added reporting requirements.

The public and system members should know whom to call or write with questions about a retirement plan. CSHB 13 would require this basic contact information to be publicly available on a website.

**Education and training.** The Sunset review of the PRB found that the agency relies too heavily on an annual seminar to deliver training, which limits its ability to reach some of the public retirement systems with the greatest educational needs. The report recommended using technology, such as web-based educational programs, to make training more accessible and cost effective. CSHB 13 would require the PRB to make training reasonably accessible on its website, which especially would help small pension systems that lack resources to pay for trustees and administrators to travel to Austin for education programs.

Many local systems conduct their own training, but there is no way to determine whether the local programs cover basic information, such as trustees' fiduciary duties, how to avoid ethical conflicts, and how to comply with open records requests. The bill would direct the PRB to establish minimum training requirements and track compliance.

OPPONENTS SAY:

CSHB 13 is unnecessary and would cost the state general revenue fund $139,188 in fiscal 2014-15, according to the LBB. The vast majority of public retirement systems already work with the PRB to promote transparency, so there is little need for new statutory requirements. In addition, the PRB has authority to subpoena records from pension systems that fail to comply with reporting requirements.

Financial information can offer a snapshot of a pension fund's current

health but is not predictive of how a fund will function over the long term. This is particularly true for newer plans that have not had time to build up their funding. There is a danger that policymakers and the public, based on information gathered through the reporting requirements in CSHB 13, would demand changes in these newer plans before they had had sufficient time to record growth through contributions and investments.

Serving as a pension system trustee can be time-consuming, and the requirement for additional training in CSHB 13 only would add to the difficulty of finding qualified individuals to serve. Public retirement systems are structured in many different ways, and it would be difficult for the PRB to provide meaningful training that was tailored to individual plan needs.

NOTES:

CSHB 13 differs from the bill as introduced in that the committee substitute would:

- define "system administrator" and "trustee";
- require the PRB to set reasonable fees to pay actual costs to conduct the training classes, require that fees be paid from an appropriate source, and allow a public retirement system to provide its own educational training to its trustees and system administrators if the PRB determined the training met minimum requirements;
- add gross and rolling gross investment returns to the report of investment returns and assumptions and allow systems to report rolling gross and rolling net return from the most recent 30-year period or gross and net investment return since inception;
- define "net investment return" and require pension systems to explain why investment information was unavailable by the reporting deadline;
- specify that records of individual members and retirees remained confidential; and
- allow pension systems to review and submit a response to the PRB's report to the Legislature and extend the deadline for the final report.

According to the LBB's fiscal note, CSHB 13 would result in a cost $139,188 in general revenue through the end of fiscal 2014-15.

The companion bill, SB 13 by Duncan, was referred to the Senate State Affairs Committee on February 13.

SUBJECT: Requiring a statewide system of neonatal and maternal levels of care

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

WITNESSES: For — Emily Briggs; Charles Brown, Society of Maternal-Fetal Medicine; Patricia Burch, Doctors Hospital at Renaissance; Frank Cho; Cris Daskevich, Texas Children's Hospital & Children's Hospital Association of Texas; Elizabeth Elliott; John Gianopoulos; Barbara Greer; Charleta Guillory, March of Dimes; Margaret Kelley, Texas Association of Obstetricians and Gynecologists; Brenda Morris; Michael Nix; Sheila Owens-Collins; Michael Speer, Texas Medical Association and Texas Pediatric Society; Michael Stanley, Pediatrix; John Thoppil; Eugene Toy; Steve Woerner, Neonatal Council; (*Registered, but did not testify:* Anastasia Benson; Eileen Garcia, Texans Care for Children; Lisa Hollier, Texas District of American Congress of Obstetricians and Gynecologists; Rebekah Schroeder, Texas Children's Hospital; James Willman, Texas Nurses Association)

Against — None

On — Mark Chassay and Matt Ferrara, HHSC; John Hawkins, Texas Hospital Association; Robert Hendler, Tenet Healthcare Corporation;

(*Registered, but did not testify:* Sam Cooper and Jane Guerrero, DSHS)

BACKGROUND: The 82nd Legislature (HB 2636 by Kolkhorst) created the Neonatal Intensive Care Unit Council. The council expires on June 1, 2013.

DIGEST: CSHB 15 would require the executive commissioner of the Health and Human Services Commission (HHSC) to assign level of care designations to hospitals based on the neonatal and maternal services provided at the hospital.

**Rules.** The executive commissioner, with input from the Department of State Health Services (DSHS), would adopt rules to:

- establish levels of neonatal and maternal care to be assigned to hospitals, specify the criteria and minimum requirements for each level designation, and post this information on the DSHS website;
- create an assignment process and grant the appropriate designation to any hospital that met the minimum requirements;
- establish a procedure for amending the level of care designation requirements, including a process to help hospitals implement changes;
- divide the state into neonatal and maternal care regions;
- facilitate transfer agreements between hospitals; and
- require payment for neonatal and maternal services, other than quality or outcome-based funding, to be based on services provided regardless of the level of care designation.

The executive commissioner would be required to adopt these rules by March 1, 2017. CSHB 15 also would require HHSC to study patient transfers that were not medically necessary but might be cost-effective. If the study indicated these transfers were feasible and desirable, the executive commissioner could adopt rules addressing them.

**Assignment.** Every hospital would be assigned a neonatal level of care by August 31, 2017 and a maternal level of care by August 31, 2019. After those dates, a hospital would be required to have a level of care designation to receive Medicaid reimbursement for neonatal and maternal services, except in emergency situations. A hospital's neonatal and maternal services would be separately evaluated and could be assigned different levels. A hospital that did not meet the minimum requirements could not be assigned a level of care. Each level of care designation would require hospitals to submit outcome data and other requested information to DSHS.

Every three years, the executive commissioner and DSHS would review each hospital’s level of care designation and, if necessary, change or remove the designation. At any time, a hospital could seek a different designation by requesting a review by the executive commissioner and DSHS.

**Perinatal advisory council.** This bill would create the Perinatal Advisory Council and require the executive commissioner to appoint 17

members by December 1, 2013. The council would consist of physicians, registered nurses, hospital representatives, and an HHSC representative. If possible, the executive commissioner would appoint former members of the NICU council. Members would serve staggered three-year terms and could be reappointed to the council. They would not be compensated, but could be reimbursed for council-related travel expenses.

The Perinatal Advisory Council would be required to:

- develop and recommend criteria and minimum requirements for neonatal and maternal levels of care;
- develop and recommend a process for designating levels of care;
- recommend neonatal and maternal regions;
- examine neonatal and maternal utilization trends; and
- recommend ways to improve neonatal and maternal care.

The council would be required to consider the geographic and different needs of Texas citizens, as well as information from the Society of Maternal-Fetal Medicine, American Academy of Pediatrics (AAP), and the American Congress of Obstetricians and Gynecologists (ACOG), including "Guidelines for Perinatal Care." They would also be required to update their recommendations based on relevant scientific or medical developments. The council would submit a report of findings and recommendations to the executive commissioner and DSHS by September 1, 2015. Using these recommendations, DSHS would develop a process to assign and update neonatal and maternal levels of care.

The Perinatal Advisory Council would be subject to Sunset review and would abolished on September 1, 2025, unless continued.

**Federal authorization.** A state agency would be required to seek any necessary federal authorization and could delay the implementation of any provision until permission was granted.

**Effective date.** This bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 15 would improve health outcomes and reduce costs for the state by mandating a statewide system based on national best practices, coordination of care, and improved efficiency.

**Uniformity.** Texas needs a better way to evaluate a hospital's level of neonatal and maternal care. Although hospitals are aware of the perinatal

standards of the American Academy of Pediatrics (AAP), they currently use the DSHS annual survey to self-designate their level of care. An informal review of the responses to the survey suggested that nearly one-third of hospitals did not meet the AAP best practices for their levels. These inconsistencies are disturbing and reflect the need for additional regulations. Further, mandatory standards are not unprecedented — Texas already defines trauma and stroke levels of care. This bill would promote uniformity and protect consumers by requiring a statewide system for maternal and neonatal levels of care.

**Better outcomes.** A uniform system based on national best practices is critical to improving health outcomes. In 2010, 51 percent of very low birth weight infants were not born in a hospital with an adequate level of care, putting Texas in the bottom 5 percent of the country on this quality measure. As a result, these infants had a 60 percent worse chance of survival. Moreover, Texas' maternal mortality rate is higher than the national average. By mandating standards based on national best practices, this bill would improve the quality of care, decrease the number of premature births, and reduce infant and maternal mortality. Additionally, CSHB 15 would improve data collection, allowing DSHS to better evaluate changes in health outcomes.

**Cost savings.** CSHB 15 also would be financially prudent. The average stay in a neonatal intensive care unit costs about $60,000 and the services are often paid by Texas Medicaid. From 2000 to 2010, the rate of very low birth weight infants in Texas remained relatively stable, but the number of neonatal intensive care unit beds has increased by 74 percent. Although some argue the proliferation of these specialized units matches increased demand, others contend that hospitals are motivated by the high reimbursement rates for the services. By mandating standards shown to reduce premature births, CSHB 15 would reduce the need for expensive stays in neonatal intensive care units. These standards would also ensure infants received an appropriate level of care and hospitals were reimbursed accordingly.

**Coordinated care.** Hospitals are not communicating well with each other, creating a fragmented and inefficient system of neonatal and maternal care. CSHB 15 would encourage cooperation and collaboration between and among hospitals by dividing the state into neonatal and maternal care regions and facilitating transfer agreements.

Although opponents argue that CSHB 15 would create substantial uncertainty about reimbursement and rules, the bill would require a lengthy and transparent rulemaking process, allowing all stakeholders to voice their opinions. Further, the bill would clarify the payment process by requiring that reimbursement be based on services provided by the facility, regardless of its level of care designation.

OPPONENTS SAY:

CSHB 15 would needlessly burden Texas' hospitals and doctors with additional regulations. Hospitals already follow the neonatal and maternal best practices established by the American Academy of Pediatrics (AAP), so mandatory, statewide standards based on the same guidelines is both unnecessary and onerous.

Additional regulations are unnecessary because over-utilization of neonatal intensive care units was largely eliminated when, in 2011, the Legislature directed HHSC to find ways to reduce elective births before the 39th week of gestation. There has since been a reduction in the number of premature infants needing neonatal intensive care services.

The bill would create uncertainty about reimbursements for neonatal and maternal services. The Legislative Budget Board suggests that CSHB 15 could decrease reimbursement and increase uncompensated care. Any lost revenue would be difficult for hospitals to absorb, particularly for those already operating in the red. Hospitals are still grappling with the substantial changes made to Texas Medicaid in 2011, and CSHB 15 could result in additional changes to the payment process.

By requiring the executive commissioner and DSHS to develop new rules related to neonatal and maternal care, this bill also would generate uncertainty about the ultimate substance of those rules. It would open the door for arbitrary standards that could make it difficult for some hospitals to achieve even the most basic level of care.

NOTES:

The committee substitute differs from the bill as filed in that it would:

- require reimbursement for neonatal and maternal services in an emergency situation and specified that reimbursement be based on services provided;
- delay the rulemaking and assignment time line and set different assignment dates for neonatal and maternal care, respectively;
- require the executive commissioner to consult with DSHS during the rulemaking process and substantially modify the content of the

rules;

- direct the executive commissioner to study certain types of patient transfers;
- change the designation review to every three years and allow a hospital to request a review at any time; and
- change the name, composition, and duties of the Perinatal Advisory Council and add the Society of Maternal-Fetal Medicine as a source of information.

According to the Legislative Budget Board, there would be no significant costs to the state to implement CSHB 15 in fiscal 2014-15. The state would spend $378,372 in general revenue in fiscal 2016 for staff and travel reimbursement, $405,174 in fiscal 2017, and $480,523 in fiscal 2018. Modifications to claims processing would cost the state $199,532 from general revenue as part of a one-time, all-funds expenditure of $798,219 in fiscal 2017.

SUBJECT: Increased punishments for promotion of prostitution of children

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Canales, Leach, Moody, Schaefer, Toth

0 nays

2 absent — Burnam, Hughes

WITNESSES: For — Dennis Mark, Redeemed Ministries; (*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference, the Roman Catholic Bishops of Texas; Laura Blanke, Texas Pediatric Society; Daniel Earnest, Washington Moscoso, Jimmy Rodriguez, San Antonio Police Officers Association)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association; (*Registered, but did not testify:* Corky Schalchin, Department of Public Safety)

BACKGROUND: Penal Code, sec. 43.02 makes prostitution a crime. Under sec. 43.02(a), it is a crime to knowingly offer to engage or to engage in sex for a fee and to solicit another in a public place to engage in sex for hire. It is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) if the person solicited was 14 to 17 years old and a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if the person solicited was younger than 14.

Penal Code, sec. 43.03 makes the promotion of prostitution a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000). It is an offense to knowingly receive money or property under an agreement to share in the proceeds of another's prostitution or to solicit someone to engage in sexual conduct with another person for payment.

Penal Code, sec. 43.04 makes the aggravated promotion of prostitution a third-degree felony. It is an offense to knowingly own, invest in, finance, control, supervise, or manage a prostitution enterprise using two or more

prostitutes.

DIGEST:

HB 32 would increase penalties for certain offenses involving the promotion of prostitution and the aggravated promotion of prostitution, and it would require those convicted of certain prostitution, promotion of prostitution, and aggravated promotion of prostitution offenses to register with the state's sex offender registry.

HB 32 would make second and subsequent offenses for the promotion of prostitution offenses state-jail felonies (180 days to two years in a state jail and an optional fine of up to $10,000) instead of class A misdemeanors.

The promotion of prostitution would be a third-degree felony if the prostitute providing services from which the promoter received money or property was younger than 17 years old or if the promoter solicited another to have sex with a person younger than 17 years old.

HB 32 would increase aggravated promotion of prostitution from a third-degree felony to a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if any prostitute used in the enterprise was younger than 17 at the time of the offense.

HB 32 would require persons convicted of certain prostitution, promotion of prostitution, and aggravated promotion of prostitution offenses to register with the state's sex offender registry.

The bill would impose the requirement to register with the state's sex offender registry for persons convicted of:

- third-degree or second-degree felony prostitution for soliciting sex from another who was younger than 18 years old;
- third-degree felony promotion of prostitution if the person providing prostitution services from which the promoter received money or other property was younger than 17 years old or if the promoter solicited another to have sex with a person younger than 17 years old;
- second-degree felony aggravated promotion of prostitution if any prostitute used in the enterprise was younger than 17 at the time of the offense; and
- similar offenses violating the laws of other states, federal laws, foreign laws, or under the Uniform Code of Military Justice.

The bill would take effect September 1, 2013, and apply only to offenses committed on or after that date.

SUPPORTERS SAY:

HB 32 is necessary to address the serious problem of human trafficking that involves the prostitution of children, who are the most vulnerable to these horrible crimes. Texas has enacted numerous laws to combat human trafficking, including laws to punish traffickers, protect victims, and create the state's Human Trafficking Prevention Task Force. HB 32 would continue these efforts by enacting narrowly tailored changes to current law to get at pimps and “johns” who exploit children for sex.

While the promotion of prostitution is a crime, the current penalties — especially when children are victimized by being prostituted — are not severe enough to deter and punish these offenders. All promotion of prostitution offenses currently are class A misdemeanors, and aggravated offenses are third-degree felonies. These lower-level punishments are essentially slaps on the wrist and are not in line with the serious, long-lasting harm that can be done when children are used as prostitutes to commit these offenses.

HB 32 would address this problem by targeting with increased criminal penalties those who promote the prostitution of children. Prostitution promotion involving children would be increased from a mere misdemeanor to a third-degree felony. Aggravated promotion of prostitution involving children could be appropriately punished with up to 10 years in prison. All promotion offenses by repeat offenders would become state jail felonies to ensure time in a state-lock up. These longer incarceration times would help protect children by deterring these offenses and keeping predators who commit them off the streets longer.

HB 32 is carefully crafted to apply only to pimps and "johns" who commit sex crimes against children. It would not apply to children who were prostituted.

While some other offenses that carry strong penalties, such as compelling prostitution and human trafficking, could cover some situations contemplated by HB 32, they would not cover all of them. For example, compelling prostitution requires force, threat, or fraud, elements that may not be present or could be difficult to prove in a particular case involving promoting the prostitution of a child. It would be more effective to ensure

that promoting and soliciting children to take part in prostitution was itself punished as a serious offense.

The serious impact of these crimes on individual children warrants increased penalties and justifies the use of any state resources to deal with them. HB 32 would not result in a significant impact on state resources, according to the bill's criminal justice impact statement.

It would be appropriate to require sex offender registration for certain prostitution, promotion of prostitution, and aggravated promotion of prostitution offenses that involve children. The registry is designed to help protect the public by making offender information available online. Persons committing these crimes preyed on a child for sex or promoted them into prostitution and could be a danger to other children, and the public should have access to information about them.

HB 32 would place these offenders in the state's sex offender registry with other, similar offenders such as persons convicted of compelling prostitution and sexual performance by a child. Any problems with the sex offender registry should be dealt with independently of this bill and should not stand in the way of including these offenses in the registry.

OPPONENTS SAY:

HB 32 is unnecessary because current law properly punishes promotion of prostitution offenses. The Penal Code makes these offenses class A misdemeanors, which can carry up to one year in jail and a $4,000 fine, and third-degree felonies, which can result in two to 10 years in prison and a $10,000 fine. Enhancing these offenses, especially from a misdemeanor to a felony, would be an unnecessary leap in punishments that are adequate under current law.

Other offenses with more serious punishments could be used, if appropriate, in these cases if they involved children. For example, compelling prostitution and human trafficking of a child, regardless of whether someone knows the age of the child, are first-degree felonies. The current structure allows punishments to vary for different crimes and allows state resources to be allocated accordingly.

Adding new offenses to the sex offender registry could compound the problems of an overly broad database that includes too many offenders who are not threats to the community and should not be grouped with sexual predators.

NOTES:

HB 8 by S. Thompson, et al., on today's calendar, also would increase penalties for the promotion of prostitution and the aggravated promotion of prostitution involving children and would require persons convicted of certain prostitution offenses to register with the state's sex offender registry.

SUBJECT: Creating a temporary license for dentists practicing charity care

COMMITTEE: Public Health — committee substitute recommended

VOTE: 11 ayes — Kolkhorst, Naishtat, Coleman, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

WITNESSES: For — Kent Macaulay, Texas Dental Association; (*Registered, but did not testify:* William Bingham, Texas Dental Association; Karen R. Johnson, United Ways of Texas; David Mintz, Texas Academy of General Dentistry; Tyler Rudd, Texas Academy of Pediatric Dentistry; Bradford Shields, Texas Coalition of Dental Service Organizations)

Against — None

On — Glenn Parker, Texas State Board of Dental Examiners

BACKGROUND: Title 22, Texas Administrative Code, §101.7(c)(1)(A) defines volunteer charity care as "the direct provision of dental services to indigent or critical need populations within the state of Texas, without compensation."

Occupations Code, sec. 256.101 governs the issuance of dental licenses to out-of-state applicants. A dentist seeking such a license must meet several conditions, including that he or she:

- not have been the subject of a final or pending disciplinary action in any jurisdiction;
- have graduated from a dental school accredited by American Dental Association and approved by the Texas State Board of Dental Examiners (TSBDE); and
- have passed a national, state board-recognized examination relating to dentistry.

DIGEST: CSHB 1491 would create a temporary dental license for voluntary charity care. In addition to meeting specified requirements under Occupations Code, sec. 256.101, a person eligible to receive such a license would be a

reputable dentist who:

- had retired in good standing in Texas no more than two years before applying for the license;
- had retired in good standing in another state with similar licensing requirements, as determined by the TSBDE, no more than two years before applying for the license; or
- currently practiced and was licensed in another state with substantially similar requirements, as determined by the TSBDE.

Dentists holding temporary licenses could practice only voluntary charity care in a specified geographic area and for a specified period of time.

The TSBDE would adopt rules for the implementation of this temporary license by January 1, 2014, and would take disciplinary action against a dentist with a temporary license in the same manner as against a Texas dentist with a regular license.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1491 would create a path for recently retired and/or out-of-state dentists in good standing to give free dental care to the neediest Texans. It would allow Texas charities offering free dental services to solicit the help of dentists in neighboring states. Dentists from across the country could volunteer in Texas following a natural disaster or other emergency. The bill also would enable dentists attending national conferences in Texas to volunteer in the local community.

At present, no practical process exists to allow dentists from outside the state or who have recently retired to perform charitable work for a short period of time. The only exceptions for out-of-state licensees are a temporary license lasting fewer than two weeks to practice only in an educational context, or a temporary license costing $700 for out-of-state dentists as a precursor to a longer-term license. Neither of these licenses easily enables out-of-state or retired dentists to practice in the short term for charitable purposes.

Under current law, out-of-state dentists who wish to perform charity work but do not hold a Texas license are confined to duties that could be

performed by volunteers with considerably less training. The bill would facilitate the process of enabling qualified, volunteer dentists from other states to practice the full scope of dentistry, including making diagnoses, taking X-rays, and performing dental procedures.

CSHB 1491 would be limited in scope, applying only to dental work without remuneration and not to current, practicing Texas dentists. All other states have licensing requirements similar to those in Texas, including graduation from an accredited dental school and successfully completion of a licensing exam. If another state changed its requirements, TSBDE could refuse to license applicants from that state.

Temporary, charity-care licenses for dentists are not new or unusual. Texas dentists may now take advantage of similar, temporary licenses for charitable work in 39 other states. Licenses for retired doctors and dentists in Texas already exist as well.

CSHB 1491 would require TSBDE to adopt rules and take disciplinary action when necessary. The board would adopt rules balancing the patient's right to recourse in the case of malpractice against the high cost of malpractice insurance deductibles for dentists. It also would prescribe penalties for dentists holding temporary, charity-care licenses who failed to meet the requisite standard of care.

Liability coverage would exist for dentists working under temporary, charity-care licenses. The State Charitable Immunity and Liability Act provides immunity from liability for volunteer health care providers, including practicing or retired dentists, who volunteer without compensation on behalf of a charitable organization. Additionally, many charitable events carry umbrella liability policies, and some dentists carry office policies extending liability coverage to volunteer work.

Limiting to two years the period after retirement in which dentists could apply for a temporary, charity-care license would ensure such dentists had kept up with continuing education and changing technology. It also would keep recently practicing dentists in the pool of volunteers.

OPPONENTS SAY:

CSHB 1491 inappropriately would create a special dispensation for dentists delivering charity care, exempting them from the same rigorous testing and vetting procedures other Texas dentists must complete. Dentists who serve the state's poorest residents should be held to exactly

the same standard as those serving the rest of the population. At a minimum, dentists holding temporary, charity-care licenses should be required to notify their patients that they did not have a standard Texas dentistry license.

The bill fails to answer questions about how patients would seek recourse in cases of malpractice and does not specify what types of insurance dentists would need to cover their liability. The cost of deductibles for malpractice insurance can be prohibitive, especially for retired dentists. The bill also does not specify how the TSBDE could effectively prosecute out-of-state dentists who did not meet the Texas standard of care because revoking their permanent dentistry license is not within the board's authority.

The proposed two-year deadline for dentists to apply for this license after retirement is arbitrary. It could prevent those still fit to practice from contributing to charitable causes, while making eligible some dentists who should not be practicing anymore.

NOTES:

The committee substitute differs from HB 1491 as filed in that it would:

- make an out-of-state, retired dentist eligible for a temporary, charity-care license if the licensing requirements of the other state were substantially similar to those in Texas;
- expand the license eligibility of dentists who retired in good standing to include Texas dentists as well as those from out of state; and
- specify that the TSBDE could take disciplinary action against dentists holding temporary, charity-care licenses.

The identical companion bill, SB 1130 by Schwertner, was reported favorably as substituted by the Senate Health and Human Services Committee on April 11 and was recommended for the Local and Uncontested Calendar.

SUBJECT: Electronic delivery of certain financial statements and reports

COMMITTEE: Elections — favorable, without amendment

VOTE: 7 ayes — Morrison, Miles, Johnson, Klick, R. Miller, Simmons, Wu

0 nays

WITNESSES: For — George Hammerlein, Harris County Clerk's Office; (*Registered, but did not testify:* Trigg Edwards, Public Citizen; Donald Lee, Texas Conference of Urban Counties; Seth Mitchell, Bexar County; Cathy Sisk, Harris County)

Against — None

BACKGROUND: Government Code, sec. 572.029 governs deadlines by which certain persons must file financial statements with the Texas Ethics Commission. The deadline for filing a financial statement is 5 p.m. of the last day designated, unless the last day is a Saturday, Sunday, or holiday, in which case the deadline is the next day that is not a Saturday, Sunday, or holiday. Financial statements are considered timely filed if properly addressed and sent via U.S. mail or a common or contract carrier by the last day for filing a statement.

Local Government Code, sec. 145.004 requires a municipal officer of a municipality with a population of 100,000 or more, or an appointee or candidate for such office, to file a financial statement with the municipality according to various dates and timeframes established in the Government Code. The timeliness of these filings is governed by Government Code, sec. 572.029.

Local Government Code, ch. 159 provides for such filings by county officers, candidates, and employees of a county with a population of 100,000 or more and justices of the peace or JP candidates of a county with a population of 125,000 or more. The timeliness of these filings also is governed by Government Code, sec. 572.029.

Election Code, sec. 254.036 governs the format and delivery of financial reports filed by political funds and campaigns. The Texas Ethics

Commission prescribes the format for these reports, whether they are filed with the commission or with another authority.

DIGEST:

HB 1035 would amend Election Code, sec. 245.036 to allow financial reports filed with authorities other than the Texas Ethics Commission to be filed:

- by mail or common or contract carrier;
- in person; or
- by electronic filing.

An authority would be required to accept an electronic filing only if it had adopted rules and procedures for electronic filing and would be required to issue an electronic receipt.

The bill also would amend Local Government Code, secs. 145.004, 159.004, and 159.053, and would add sec. 159.0341 to allow timely filing by those subject to these sections to include statements that were personally delivered by 5 p.m. on the final day or electronically filed by midnight on that day. An authority would be required to accept an electronic filing only if it had adopted rules and procedures for electronic filing.

The bill would take effect September 1, 2013, and would apply only to financial statements required to be filed on or after January 1, 2014.

SUPPORTERS SAY:

HB 1035 would bring the Texas financial reporting statutes into the 21st century and would make them more uniform.

Current law does not always allow for electronic submission of these financial reporting statements, but it does require authorities receiving the reports to post them online, creating extra work. Authorities must accept and scan paper filings in order to post them online, when both those submitting and those receiving the reports would prefer electronic submissions. HB 1035 would streamline the process, reducing the workload for the receiving entities. It also would allow faster posting with less room for human error and uploaded documents with better image quality.

This streamlined process also would improve transparency. Often watchdogs and journalists who use the online reports are frustrated with

the delay caused by the need to manually scan and upload the reports. Allowing electronic submission would expedite the process and allow public access to the financial reports more quickly. The receiving authorities could program an automated process to upload reports as they were received, providing instant access for the public.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The identical companion bill, SB 755 by Patrick, was referred to the Senate State Affairs Committee on February 26.

SUBJECT: Extending the decommissioning trust for new nuclear-powered plants

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Smithee

0 nays

4 absent — Hilderbran, Menéndez, Oliveira, Sylvester Turner

WITNESSES: For — Mark McBurnett, Nuclear Innovation North America; Nate McDonald, Matagorda County; Mitch Thames; Bay City Chamber of Commerce; (*Registered, but did not testify*: John W. Fainter, Jr., Association of Electric Companies of Texas, Inc.; Robert Nathan, CPS Energy; Thomas Oney, Luminant Generation Company; John Orr, Exelon Corp.; Mark Zion, Texas Public Power Association)

Against — (*Registered, but did not testify*: Luke Metzger, Environment Texas

On — Cyrus Reed, Sierra Club - Lone Star Chapter; (*Registered but did not testify*: Darryl Tietjen, PUC of Texas)

BACKGROUND: In 2007, the 80th Texas Legislature enacted HB 1386, which set up requirements for an external, irrevocable trust fund to fund decommissioning obligations for a nuclear generating unit consistent with federal Nuclear Regulatory Commission requirements. It applied to nuclear generation units under construction in Texas after January 1, 2007, but before January 1, 2015.

DIGEST: HB 994 would change the definition of nuclear generating unit by removing the condition that the unit have been under construction in Texas after January 1, 2007, but before January 1, 2015.

It would apply the provisions of Texas' nuclear decommissioning cost plan and decommissioning trust to the first six nuclear plants the construction of which began on or after January 1, 2013 and before January 1, 2033.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 994 would open the door for future growth of the nuclear industry in Texas and contribute to the state's diverse supply of electricity by extending decommissioning funding to cover the life of new infrastructure investments. It also would contribute to the economies of the communities near the state's two existing nuclear power plants, the South Texas Project in Matagorda County and the Comanche Peak Nuclear Power Plant in Somervell County.

Texas is a leader in many energy areas, and HB 994 would allow Texas to remain viable in nuclear energy production. It would not mandate additional nuclear facilities but would clear the way for the free market to work. Given the changing cost of alternatives, 20 years would be the proper window of time for which to extend the trust's funding mechanism in order to let the free market decide if Texas needed more nuclear energy. Maintaining the option for nuclear energy as a part of the state's diverse energy mix would contribute to energy security and continue to be an economic benefit.

HB 994 would allow decommissioning to be funded over the lifetime of the unit, which otherwise would require significant upfront funding for decommissioning costs to meet NRC requirements.

Investors need the confidence to plan for future expansion. To date, Nuclear Innovation North America has invested more than $1 billion in developing a new project with two additional boiler reactors at its Matagorda County facilities. The bill would provide investors with assurance that future investments would have the same cost structure for decommissioning.

The bill would ensure that the state's nuclear reactors continued to provide jobs and contribute to the economic development in Matagorda and Somervell counties and surrounding communities. The thousands of jobs at nuclear facilities pay well and allow workers to employ valuable skills. Additionally, community colleges such as the Wharton County Junior College have worked closely with the nuclear industry to create a curriculum that supplies skilled workers, including those who may work at the South Texas Project. The bill would ensure that these jobs grow and

continue to contribute to the region's economic development and stability for years to come.

Extending these provisions would pose a negligible risk to taxpayers or the state. The bill only ensures that the state's nuclear facilities remain compliant with national standards, and decommissioning costs would be the obligation of the producers, then their insurance policies, before any costs could ever reach the state. It is extremely unlikely that taxpayers could ever be burdened with decommissioning costs.

OPPONENTS SAY:

HB 994 could put the state on the hook for the decommissioning costs of nuclear power plants if the trust funds were insufficient. Nuclear power is already a heavily subsidized business, and taxpayers should never have to pay decommissioning costs. In 2008, a state-commissioned study found it could cost $1.5 billion to decommission the South Texas Project while a 2009 study concluded it could cost about $1.2 billion to decommission Comanche Peak. These costs could be higher in the future, depending on when the nuclear plants were decommissioned.

Twenty years also is too long to place in statute the decommissioning trust provisions. There could be major technological or environmental discoveries that change the way Texas views nuclear power, and a 20-year extension would remove the built-in safeguard of a more frequent reevaluation process.

OTHER OPPONENTS SAY:

Texas does not need nuclear power, which HB 994 would help to continue. There are alternative ways to produce electricity in Texas that do not produce toxic waste and create safety and environmental risks.

NOTES:

The companion bill, SB 405 by Hegar, was left pending in the Senate Business and Commerce committee on March 5.